

**IN THE MATTER OF
THE PERMIT OF**

RUTH DOAN
d/b/a LA VAJADITA BAR & GRILL
3033 WASHINGTON BLVD.
FORT WAYNE, IN 46802

Applicant.

PERMIT NO. RR02-21884

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. BACKGROUND OF THE CASE

Ruth Doan, d/b/a La Vajadita Bar & Grill, 3033 Washington Blvd., Fort Wayne, Indiana 46802 (“Applicant”), permit number DL1920963, is the applicant for a type 112 Alcohol and Tobacco Commission (“Commission” or “ATC”) permit. The application was assigned to the Allen County Local Alcoholic Beverage Board (“Local Board”). On August 8, 2005, the Local Board heard the application request and on that same day, voted 2-2 with respect to the application. The Commission reviewed the record of the Local Board and disapproved the application on August 16, 2005. Applicant filed a timely Notice of Appeal and the matter was assigned to Commission Hearing Judge U-Jung Choe (“Hearing Judge”). The matter was set for hearing on April 13, 2006, and at that time, witnesses were sworn, evidence was heard, and matters were taken under advisement. The Hearing Judge, having reviewed the tape-recorded transcript of the Local Board hearing, the evidence submitted to the Commission, and contents of the entire Commission file, now tenders her Proposed Findings of Fact and Conclusions of Law for recommendation to the members of the Commission.

II. EVIDENCE BEFORE THE COMMISSION

A. The following individuals testified before the Commission:

1. Ruth Doan, Applicant.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Ruth Doan, d/b/a La Vajadita Bar & Grill, 3033 Washington Blvd., Fort Wayne, Indiana 46802, permit number DL1920963, is the Applicant for a type 112 Alcohol and Tobacco Commission permit.
2. The Hearing Judge took judicial notice of the entire Commission file, including but not limited to, the Local Board tapes, the Local Board file, and the ATC file. (ATC Hearing).
3. The Hearing Judge may take judicial notice of the Commission file relevant to a case, including the transcript of proceedings and exhibits before the local board. 905 IAC 1-36-7(a).
4. The Hearing Judge conducted a *de novo* review of the appeal on behalf of the Commission including a public hearing, and a review of the record and documents in the Commission file. IC 7.1-3-19-11(a); 905 IAC 1-36-7(a), -37-11(e)(2); *see also* IC 4-21.5-3-27(d).
5. Evidence at the hearing was received in accordance with the Indiana Administrative Code and the Commission's rules. The findings here are based exclusively upon the substantial and reliable evidence in the record of proceedings and on matters officially noticed in the proceeding. 905 IAC 1-37-11(e)(2); IC 4-21.5-3-27(d).
6. On or about August 8, 2005, the Local Board heard the application request and on that same day, voted 2-2 with respect to the application. (ATC File; Local Board Hearing). This vote does not constitute a recommendation of the Local Board. IC 7.1-2-4-16; IC 7.1-3-19-11. Irrespective of such a vote, the Commission is authorized to act on the application. IC 7.1-3-19-1; IC 7.1-3-19-10; *Indiana Alcoholic Beverage Comm'n v. State ex. rel. Harmon*, 379 N.E.2d 140, 142, 146-7 (Ind. 1978).
7. On or about August 16, 2005, The Commission reviewed the record of the Local Board and disapproved the application. (ATC File).

8. The Commission denied the application on the basis that the Applicant falsified the permit application. (*Id.*).
9. On the permit application, Applicant checked “no” to the question “Have any individuals with an interest in this permit been convicted of a felony or a misdemeanor?” (ATC File).
10. On June 1, 1998, Applicant was convicted in Allen County, Indiana, under Cause No. 02D04-9804-CM-003137, of operating a motor vehicle with a suspended license, a Class A Misdemeanor. Ind. Code § 9-24-19-3. (ATC File; Certified Allen County Court Records).
11. On March 15, 1999, Applicant was convicted in Allen County, Indiana, under Cause No. 02D04-9903-CM-001744, of operating a motor vehicle with a suspended license, a Class A Misdemeanor. Ind. Code § 9-24-19-3. (ATC File, Certified Allen County Court Records).
12. On August 9, 2002, Applicant was convicted in Allen County, Indiana, under Cause No. 02D04-0206-CM-004811, of operating a motor vehicle with a suspended license within ten years of a prior similar infraction, a Class A Misdemeanor. Ind. Code § 9-24-19-2. (ATC File, Certified Allen County Court Records).
13. On April 30, 2004, Applicant was convicted in Allen County, Indiana, under Cause No. 02D04-0404-CM-002792, of operating a motor vehicle with a suspended license, a Class A Misdemeanor. Ind. Code § 9-24-19-3. (ATC File, Certified Allen County Court Records).
14. Applicant testified that she was convicted of operating a vehicle with a suspended license in 2003. (Testimony of Ruth Doan; ATC Hearing).
15. The permit application was not properly submitted pursuant to IC 7.1-3-1-4.
16. Applicant presented no evidence to support her position that she is qualified to hold an alcoholic beverage permit. (ATC Hearing)
17. Based on the entire record, the Commission’s decision to deny the Applicant’s permit is based on reasonable and sound evidentiary support, and is, therefore, supported by substantial

evidence. *Indiana Dept. of Natural Resources v. United Refuse Co., Inc.* 615 N.E.2d 100, 104 (Ind. Ct. App. 1993).

18. The Commission's action in denying the permit to the Applicant was not (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (b) contrary to a constitutional right, power, privilege, or immunity; (c) in excess of, or contrary to, statutory jurisdiction, authority, limitations or rights; (d) without observance of procedure required by law; or (e) unsupported by substantial evidence. . IC 7.1-3-19-11.

19. The Commission may grant or refuse the permit application accordingly as it deems the public interest will be served best.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that the finding of the Indiana Alcohol & Tobacco Commission in denying the permit to the Applicant, Ruth Doan, d/b/a La Vajadita Bar & Grill, 3033 Washington Blvd., Fort Wayne, Indiana 46802, permit number DL1920963, was based on substantial evidence and must be sustained. Therefore, the decision of the Commission in this matter is hereby upheld and the appeal in this matter is DENIED.

DATED: June 14, 2006

U-Jung Choe, Hearing Judge
Indiana Alcohol & Tobacco Commission